



Construction Law: What foreign investors don't know about buying New York real estate - by C. Jaye Berger

April 07, 2020 - Front Section



When foreigners purchase property in the United States, often condominiums, they are generally focused primarily on the cost of the property, the location and potential appreciation in value as an investment. The United States has traditionally been a good place to invest savings from their own less stable countries. For these reasons, they often do not pay as much attention as they should to the technicalities and formalities associated with the purchase, since they usually rent out the units.

I am frequently consulted for advice by people wanting to make such purchases and to advise on the related issues. Here are some considerations:

While it is standard practice for a New York closing attorney to review the Offering Plan, Bylaws and minutes of a condominium before closing, they do not necessarily retain legal counsel to for this, as they should. The problem is made worse if they are purchasing it all in cash. Banks want to ensure that the deal is well-secured, so they also do their due diligence to review the necessary papers.

New York condominiums want to make sure that they can “find” unit owners in the event of a default. That is one reason that condominiums require unit owners to sign papers before or at the closing stating who can be served with “process” for them in New York and which courts have jurisdiction. It is amazing how even in this Internet world, people can “disappear.” For example, one out-of-state unit owner in a condominium defaulted on common charges and assessments. When the building manager tried to contact the person, all the information they had was stale. He had changed his cell number. He was no longer living in the location where the building had him listed. The building also did not have his work address. The tenants in the unit would not share any information about the owner’s whereabouts. The level of difficulty multiplies when you add the extra element of it being an international owner.

These are the same kinds of issues and concerns that arise when a unit is purchased by a trust or a limited liability company or is purchased by an individual who wants to change ownership to a living trust. How is the payment of common charges and assessments going to be guaranteed ?

Insurance is another weak spot for many foreign investors. They often do not purchase general liability insurance. Instead, they ask their tenants to purchase insurance, which may or may not actually be done or the insurance does not cover the hazard. Renters insurance is not meant to cover the same liabilities as the kind of policy which a unit owner might purchase.

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